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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/579,644  
Filing Date: May 18, 2006  
Appellant(s): SCHLEPPENBACH ET AL.

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Keith J. Swedo  
Reg. No. 43,176  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/22/2010 appealing from the Office action mailed 2/23/2010.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Rejected: 1-9, 27, 30-45 and 47-51.

Pending: 1-9, 27, 30-45 and 47-51.

**(4) Status of Amendments After Final**

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

**(8) Evidence Relied Upon**

6,912,529	Michael Kolffman
6,725,424	Schwerdtfeger et al.
6,925,595	Whitledge et al.
7,065,483	Decary et al.
4,470,821	Laurence LeCapelain
5,850,629	Holm et al.
7,333,507	Bravin et al.
2005/0021859	Willian et al.
2002/0178007	Slotznick et al.
2003/0152904	Thomas R. Doty Jr.

## **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5 and 51 rejected under 35 U.S.C. 103(a) as being unpatentable over Michael Kolfman US Patent No. 6,912,529 (hereinafter, "Kolfman"), and further in view of Schwerdtfeger et al. US Patent No. 6,725,424 (hereinafter, "Schwerdtfeger").

#### **Claim 1:**

Kolfman teaches:

*A method of communicating content, said method comprising the steps of [abstract] [storing and retrieving documents]*  
*converting the inputted content from the content group into an XML format to form converted content* [col. 18, lines 5-35] [XML generator uses a DTD do convert to convert files of multiple formats to XML] [col. 1, lines 50-65] [convert and view in Adobe Acrobat]; ... ;

*outputting the converted content into a plurality of output devices* [col. 20, lines 28-34] [produce formatted output for display] [col. 22, lines 47-50, 63-66 and fig. 2] [error messages and documents output to different computers (6) and (8)]; *and ...*

Kolfman fails to teach:

*applying a DOM tree to the content; ...*

*coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output*

Schwerdtfeger teaches:

*applying a DOM tree to the content* [col. 10, lines 13-68] [transcoded DOM to output devices] [col. 3, line 62 through col. 4, line 8] [DOM generator];

*coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output* [col. 11, lines 15-20] "[issues new **output commands to assistive technology 74 and/or output device 24**" output commands to two output devices (74) and (24) is synchronized output even though the specific term "synchronized" is not used, when a command is sent to two devices they are synchronized] [col. 2, lines 4-16] [screen readers synchronize output, it should also be noted that every device that can play a DVD and output the sound delivers "synchronized output" because the video and sound are synchronized] [col. 3, lines 10-20] [output for multiple devices, including Braille display or speech engine].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of converting documents to XML in Kolfman with the method of creating a DOM tree in Schwerdtfeger.

This combination would have been useful for creating a document that can easily manipulated using the DOM.

Examiner's note: Applicant's own specification says that the "multiple synchronized outputs" may be a monitor and speakers [Original specification: page 11, lines 1-12].

**Claim 2:**

Schwerdtfeger teaches: *The method of claim 1, wherein at least one said output devices is configured for use by a special needs person.* [col. 3, lines 10-28] [Braille display or speech engine is for special needs person]

**Claim 4:**

Schwerdtfeger teaches: *The method of claim 1, further comprising a step of reading the DOM tree from data embedded in the inputted content* [col. 7, lines 48-65] [modified parts of the document are pre-transcoded in the DOM and saved for use in the DOM creation process].

**Claim 5:**

Schwerdtfeger teaches: *The method of claim 1, further comprising a step of scanning the inputted content to develop the DOM tree* [col. 3, line 62 through col. 4,

line 8] [the inputted document would have to be scanned to produce an identifier for each element].

**Claim 51:**

Schwerdtfeger teaches: *The method of claim 1, wherein the plurality of the output devices delivers output synchronized for multiple simultaneous outputs* [col. 2, lines 4-16] [screen readers synchronize output in that the audio output is synchronized to the display output of the screen, it should also be noted that every device that can play a DVD and output the sound delivers "synchronized output" because the video and sound are synchronized] [col. 3, lines 10-20] [output for multiple devices, including Braille display or speech engine]

Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman and Schwerdtfeger as applied to claim 1 above, and further in view of Willian et al US Publication No. 2005/0021859 (hereinafter, "Willian").

**Claim 3:**

Kolfman and Schwerdtfeger disclose all the elements of Claim 1, as noted in the above rejection.

Kolfman and Schwerdtfeger fail to teach:

*The method of claim 1, wherein at least one said output devices is a test device usable for administering standardized tests.*

Willian teaches:



*The method of claim 1, wherein at least one said output devices is a test device usable for administering standardized tests [paragraphs 0005, 0028 and 0041] [conversion of math or English tests for visually or hearing impaired].*

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of converting document to XML in Kolfman and the method of creating a DOM tree in Schwerdtfeger with the method of test administration in Willian.

This combination would have been useful for a better testing situation for a special needs person.

Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman and Schwerdtfeger as applied to claim 1 above, and further in view of Whitledge et al US Patent No. 6,925,595 (hereinafter, "Whitledge").

**Claim 6:**

Kolfman and Schwerdtfeger disclose all the elements of Claims 1 and 5, as noted in the above rejection:

Kolfman and Schwerdtfeger fail to teach:

*The method of claim 5, wherein said scanning step includes a step of headings scanning in order to identify at least one of headings, subheadings, and chapters.*

Whitledge teaches:

*The method of claim 5, wherein said scanning step includes a step of headings scanning in order to identify at least one of headings, subheadings, and chapters [col. 25, lines 16-50 and fig. 11] [identifies each part].*

Whitledge simply discloses the common way for arranging a DOM. Each DOM that is created scans the document to identify the different elements. These different elements are most commonly, headings, text, graphics, tables, row, columns, cells, titles, headings as well as other items.

Although Schwerdtfeger does not specifically mention these elements the identification of these elements would have been common to one having ordinary skill in the art at the time of the invention.

Claim 7-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman and Schwerdtfeger as applied to claim 1 above, and further in view of Decary et al US Patent No. 7,065,483 (hereinafter, "Decary").

**Claim 7:**

Kolfman and Schwerdtfeger disclose all the elements of Claim 1, as noted in the above rejection:

Kolfman and Schwerdtfeger fail to teach:

*The method of claim 1, further comprising a step of parsing the inputted content into at least content pieces, the content pieces having a characteristic selected from a characteristic group comprising a paragraph, a phrase, a word, and a letter.*

Decary teaches:

*The method of claim 1, further comprising a step of parsing the inputted content into at least content pieces, the content pieces having a characteristic selected from a characteristic group comprising a paragraph, a phrase, a word, and a letter* [col. 5, lines 14-23 and col. 9, lines 30-47] [extract parts of document and parts of speech, scanning each letter to identify noun phrase].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of converting document to XML in Kolfman and the method of creating a DOM tree in Schwerdtfeger with the method of speech part identification in Decary.

This combination would have been useful for identifying parts of a document that may need to be changed or altered for a special needs person.

**Claim 8:**

Schwerdtfeger teaches: *The method of claim 7, further comprising a step of analyzing the content pieces so as to assign an identifier to each of said content pieces* [col. 3, line 62 through col. 4, line 8] [generating a unique identifier for each element].

**Claim 9:**

Decary teaches: *The method of claim 8, wherein the identifier is at least one selected from an identifier group comprising a subject, a predicate, and an object* [col. 6, lines 55-65] [identify each part of speech, noun, subject, object, verb etc.].

Claim 43 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman, Schwerdtfeger and Decary as applied to Claims 7 and 9 above in view of Slotznick et al. US Patent Publication No. 2002/0178007 (hereinafter, "Slotznick").

**Claim 43:**

Schwerdtfeger, Kolfman and Decary disclose all the elements of Claim 7 as shown above.

Schwerdtfeger, Kolfman and Decary fail to teach:

*The method of claim 7, further comprising a step of highlighting individual words.*

Slotznick teaches:

*The method of claim 7, further comprising a step of highlighting individual words.*

[paragraphs 0006 and 0106] [word is highlighted as it is read].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolfman and the method of creating a screen reader toolbar in Schwerdtfeger and the method of parsing in Decary with the method of highlighting in Slotznick.

This combination would have been useful for creating a content that can easily used by a special needs person.

Claim 44-45 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman, Schwerdtfeger and Decary as applied to Claims 7 and 9 above in view of Laurence LeCapelain US Patent No. 4,470,821 (hereinafter, "LeCapelain").

**Claim 44:**

Schwerdtfeger, Kolfman and Decary disclose all the elements of Claim 7 as shown above.

Schwerdtfeger, Kolfman and Decary fail to teach:

*The method of claim 7, further comprising a step of color coding at least one of passages and words.*

LeCapelain teaches:

*The method of claim 7, further comprising a step of color coding at least one of passages and words* [abstract and col. 2, lines 23-59] [color code parts of speech].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolfman and the method of creating a screen reader toolbar in Schwerdtfeger and the method of parsing in Decary with the method of highlighting and color coding in LeCapelain.

This combination would have been useful for creating a content that can easily used by a special needs person.

**Claim 45:**

LeCapelain teaches: *The method of claim 9, further comprising a step of color coding at least one of a subject, a predicate, and an object of a sentence* [abstract and col. 2, lines 23-59] [color code parts of speech].

Claims 27, 30 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Michael Kolfman US Patent No. 6,912,529 (hereinafter, "Kolfman"), and further in view of Holm et al. US Patent No. 5,850,629 (hereinafter, "Holm").

**Claim 27:**

Kolfman teaches:

*A method of communicating content to a special needs person, said method comprising the steps*  
*of accepting content input [abstract] [storing and retrieving documents];*  
*using a processor to convert said content input into a converted content,*  
[col. 18, lines 5-35] [XML generator uses a DTD do convert to convert files of multiple formats to XML] [col. 1, lines 50-65] [convert and view in Adobe Acrobat];  
... ;  
*modifying output to the special needs person based upon a selected configuration* [col. 20, lines 28-34] [produce formatted output for display].

Kolfman fails to teach:

*providing a computerized output configuration toolbar to the special needs person; ...*  
*wherein the toolbar is configured to modify an existing third-party software application.*

Holm teaches:

*providing a computerized output configuration toolbar to the special needs person* [col. 3 lines 16-35 and fig. 3a] [a "transport bar" is a toolbar activated by]; ...

*wherein the toolbar is configured to modify an existing third-party software application* [col. 10 lines 1-68, col. 3, lines 35-68 and figs. 2,10] [toolbar is used on top of MICROSOFT EXCEL or WORDPERFECT] [modification is either the converting of the application text into speech. The modification may also be the use of the computer to control the program to copy the text; this would be a modification of the program interface].

Holm also teaches "*said content input into a converted content*" [in that the displayed content is converted to speech]

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of converting documents to XML in Kolfman with the method of creating a screen reader toolbar in Holm.

This combination would have been useful for creating a document that can easily manipulated using the screen reader.

**Claim 30:**

Holm teaches: *The method of claim 27, wherein the special needs person can modify voice selection* [col. 9, lines 8-10 and col. 7, lines 1-3] [select voice].

**Claim 34:**

Holm teaches: *The method of claim 27, comprising the further step of enabling the special needs person to use the toolbar to change a reading rate at which speech is generated* [col. 5 lines 20-28 and fig. 4] [a slider to change the reading rate].

Claim 33 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman and Holm as applied to Claim 27 above in view of Bravin et al. US Patent No. 7,333,507 (hereinafter, "Bravin").

**Claim 33:**

Holm and Kolfman disclose all the elements of Claim 27 as shown above.

Holm and Kolfman fail to teach:

*The method of claim 27, comprising the further step of providing a computerized avatar to facilitate communicating of the content.*

Bravin teaches:

*The method of claim 27, comprising the further step of providing a computerized avatar to facilitate communicating of the content* [abstract] [col. 6, lines 22-33] [sign language generator and avatar].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolfman and the method of creating a screen reader toolbar in Holm with the method of on screen avatars in Bravin.

This combination would have been useful for creating a content that can easily used by a special needs person.

Claim 35 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman and Holm as applied to Claim 27 above in view of Willian et al US Patent Publication No. 2005/0021859 (hereinafter, "Willian").



**Claim 35:**

Holm and Kolfman disclose all the elements of Claim 27 as shown above.

Holm and Kolfman fail to teach:

*The method of claim 27, comprising the further steps of: loading a test onto a portable system; providing a plurality of communication channels on the portable system by which the person may interact with the portable system; and recording responses from said individual communicated via at least one of said channels.*

Willian teaches:

*The method of claim 27, comprising the further steps of:*

*loading a test onto a portable system [paragraph 005] [test for hearing or visually impaired] [paragraph 0020 and 0022] [retrieving from server and distribute to wireless computer, a wireless computer is portable];*

*providing a plurality of communication channels on the portable system by which the person may interact with the portable system [paragraph 0023] [monitor, speakers, printer, keyboard, mouse and microphone]; and*

*recording responses from said individual communicated via at least one of said channels [paragraph 0048] [the input devices are record responses including IVR].*

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolfman and the method of creating a screen reader toolbar in Holm with the method of test conversion in Willian.

This combination would have been useful for creating a content that can easily used by a special needs person.

Claim 36-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman, Holm and Willian as applied to Claim 35 above in view of Thomas R. Doty JR US Patent Publication No. 2003/0152904 (hereinafter, "Doty").

**Claim 36:**

Schwerdtfeger, Kolfman and Willian disclose all the elements of Claim 35 as shown above.

Holm, Kolfman and Willian fail to teach:

*The method of claim 35, comprising the further step of using the processor to time portions of the test.*

Doty teaches:

*The method of claim 35, comprising the further step of using the processor to time portions of the test* [paragraphs 0034 and 0113, 0174] [control response time would require the test to be timed, and adding question times, input response times and time outs].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolfman and the method of creating a screen reader toolbar in Holm with the method of test conversion in Willian and the method of test proctoring in Doty.

This combination would have been useful for creating a content that can easily used by a special needs person.

**Claim 37:**

Doty teaches: *The method of claim 35, comprising the further step of using the processor to prevent the person from returning to a portion of the test* [paragraph 0117] [start and stop progress of test] [test question response time, if student goes over the allotted time for the question, the question is forfeited, which means they can't return to the question] [paragraph 0174]

This element was also well known in the art at the time of the invention and a normal part of computerized test taking at the time of the invention.

**Claim 38:**

Doty teaches: *The method of claim 35, comprising the further step of using the processor to enable a proctor to add additional time for taking the test* [paragraphs 0034 and 0113, 0174] [control response time would require the test to be timed, and adding question times, input response times and time outs].

**Claim 39:**

Doty teaches: *The method of claim 35, comprising the further step of using the processor to enable a proctor to cancel a portion of the test* [paragraph 0117] [start and stop progress of test] [this element was also well know in the art at the time of the invention and a normal part of computerized test taking at the time of the invention].

**Claim 40:**

Doty teaches: *The method of claim 35, further comprising the step of delivering the portable system to a site at which testing content may be used.*

[paragraph 0009] [deliver courseware to learners, delivery devices include computers which are portable systems].

Claim 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Kolfman, Holm and Willian as applied to Claim 35 above in view of Schwerdtfeger et al. US Patent No. 6,725,424 (hereinafter, "Schwerdtfeger").

**Claim 41:**

Holm, Kolfman and Willian disclose all the elements of Claim 35 as shown above.

Holm, Kolfman and Willian fail to teach:

*The method of claim 35, wherein the providing of channels step includes permitting access to at least one of an access group comprising a Braille keyboard and a sip-and-puff device*

Schwerdtfeger teaches: *The method of claim 35, wherein the providing of channels step includes permitting access to at least one of an access group comprising a Braille keyboard and a sip-and-puff device* [col. 3, lines 10-29] [Braille display used for presenting information to a user] [col. 10 lines 30-35] [Braille display includes keys or buttons for user input] [col. 7, lines 17-40; col. 8, lines 5-18] [multiple types of input devices, including speech-to-text converter or other input devices not show] [Sip and Puff: This device allows a user to control the cursor with sips or puffs of air on a mouth tube and can be used by a system that has a cursor].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolfman and the method of creating a screen reader toolbar in Holm with the method of test conversion in Willian and the use of a sip and puff device in Schwerdtfeger.

This combination would have been useful for creating a content that can easily used by a special needs person.

**Claim 42:**

Kolfman teaches: *The method of claim 35, further comprising a step of converting the testing content to XML format* [col. 18, lines 5-35] [XML generator uses a DTD do convert to convert files of multiple formats to XML].

Claim 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Schwerdtfeger et al. US Patent No. 6,725,424 (hereinafter, "Schwerdtfeger") in view of Bravin et al. US Patent No. 7,333,507 (hereinafter, "Bravin")

**Claim 31:**

Schwerdtfeger discloses: *A method of communicating content to a special needs person* [abstract], *said method comprising the steps of:*

*accepting content input* [col. 2, lines 17-27] [user input];

*using a processor to convert said content input into a converted content* [col. 7, lines 17-30] [text to speech converter];

*providing a computerized output configuration toolbar to the special needs person* [col. 10, lines 13-29] [screen readers, the interface has buttons for reading

controls, these buttons are part of a "toolbar", It should also be noted that screen readers were common in the art at the time of the invention and screen readers have a toolbars that "modify an existing third-party software";

*modifying output to the person based upon a selected configuration* [col. 4, lines 35-55] [modifying output based on the assistive technology device that is connected];  
*and ...*

*wherein the plurality of the output devices delivers output synchronized for multiple simultaneous outputs* [col. 2, lines 4-16] [screen readers synchronize output in that the audio output is synchronized to the display output of the screen, it should also be noted that every device that can play a DVD and output the sound delivers "synchronized output" because the video and sound are synchronized] [col. 3, lines 10-20] [output for multiple devices, including Braille display or speech engine].

See examiner remarks below. Applicant's own specification says that the "multiple synchronized outputs" may be a monitor and speakers [Original specification: page 11, lines 1-12]

Schwerdtfeger fails to teach:

*providing a computerized avatar to facilitate communicating of the content.*

Bravin teaches:

*providing a computerized avatar to facilitate communicating of the content*

[abstract] [col. 6, lines 22-33] [sign language generator and avatar].

In addition to Schwerdtfeger, Bravin also discloses: *modifying output to the person based upon a selected configuration* [col. 5, lines 1-19] [communication channel

depends on the selected user devices and input/output methods and ways of communication]

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of creating a screen reader toolbar in Schwerdtfeger with the method of on screen avatars in Bravin.

This combination would have been useful for creating a content that can easily used by a special needs person.

Claim 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Holm et al. US Patent No. 5,850,629 (hereinafter, "Holm") in view of Schwerdtfeger et al. US Patent No. 6,725,424 (hereinafter, "Schwerdtfeger") and further in view of Willian et al US Patent Publication No. 2005/0021859 (hereinafter, "Willian")..

**Claim 32:**

Holm teaches:

*A method of communicating content to a special needs person, said method comprising the steps of: accepting content input; [abstract] [text to speech] using a processor to convert said content input into a converted content [col. 4, lines 57-68] [converting text to speech, in this case the converted content is the speech]; providing a computerized output configuration toolbar to the special needs person [col. 10 lines 1-68, col. 3, lines 35-68 and figs. 2,10] [toolbar is used on top of*

MICROSOFT EXCEL or WORDPERFECT] [modification is either the converting of the application text into speech. The modification may also be the use of the computer to control the program to copy the text, this would be a modification of the program interface];

*enabling the person to use the toolbar to change a reading rate at which speech is generated* [col. 5 lines 20-28 and fig. 4] [a slider to change the reading rate];

*modifying output to the special needs person based upon a selected configuration* [col. 5 lines 20-28 and fig. 4] [a slider to change the reading rate is modifying the output]; ...

Holm fails to teach:

*loading a test onto a portable system;*

*providing a plurality of communication channels on the portable system by which the person may interact with the portable system, the channels including at least one of an a Braille keyboard and a sip-and-puff device; and*

*recording responses from said special needs person communicated via at least one of said channels.*

Schwerdtfeger teaches:

*the channels including at least one of an a Braille keyboard and a sip-and-puff device* [col. 3, lines 10-29] [Braille display used for presenting information to a user] [Sip and Puff: This device allows a user to control the cursor with sips or puffs of air on a mouth tube and can be used by a system that has a cursor].



It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the method of converting text to speech in Holm with the method of using devices for special needs people in Schwerdtfeger.

This combination would have been useful for creating a document that can easily manipulated using the screen reader.

Schwerdtfeger and Kolfman fail to teach:

*loading a test onto a portable system;*

*providing a plurality of communication channels on the portable system by which the person may interact with the portable system, ... ; and*

*recording responses from said special needs person communicated via at least one of said channels.*

Willian teaches:

*loading a test onto a portable system* [paragraph 005] [test for hearing or visually impaired] [paragraph 0020 and 0022] [retrieving from server and distribute to wireless computer, a wireless computer is portable];

*providing a plurality of communication channels on the portable system by which the person may interact with the portable system* [paragraph 0023] [monitor, speakers, printer, keyboard, mouse and microphone]; *and*

*recording responses from said special needs person communicated via at least one of said channels* [paragraph 0048] [the input devices are record responses including IVR].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Holm and the method of using special needs devices in Schwerdtfeger with the method of test conversion in Willian.

This combination would have been useful for creating a content that can easily used by a special needs person.

**Claim 50:**

Schwerdtfeger teaches: *The method of claim 46, wherein the providing of channels step includes permitting access to at least one of an access group comprising a Braille keyboard and a sip-and-puff device* [col. 3, lines 10-29] [Braille display used for presenting information to a user] [col. 7, lines 17-40; col. 8, lines 5-18] [multiple types of input devices, including speech-to-text converter or other input devices not show] [Sip and Puff: This device allows a user to control the cursor with sips or puffs of air on a mouth tube and can be used by a system that has a cursor].

Claim 47-49 rejected under 35 U.S.C. 103(a) as being unpatentable over Holm, Schwerdtfeger and Willian as applied to Claim 46 above in view of Thomas R. Doty JR US Patent Publication No. 2003/0152904 (hereinafter, "Doty").

**Claim 47:**

Holm, Kolfman and Willian disclose all the elements of Claim 46 as shown above.

Schwerdtfeger, Holm and Willian fail to teach:

*The method of claim 46, comprising the further step of using the processor to time portions of the test.*

Doty teaches:

*The method of claim 46, comprising the further step of using the processor to time portions of the test* [paragraphs 0034 and 0113, 0174] [control response time would require the test to be timed, and adding question times, input response times and time outs].

It would have been obvious to one having ordinary skill in the art at the time of the invention to combine the conversion method in Kolman and the method of creating a screen reader toolbar in Schwerdtfeger with the method of test conversion in Willian and the method of test proctoring in Doty.

This combination would have been useful for creating a content that can easily used by a special needs person.

**Claim 48:**

Doty teaches: *The method of claim 46, comprising the further step of using the processor to prevent the person from returning to a portion of the test* [paragraph 0117] [start and stop progress of test] [this element was also well know in the art at the time of the invention and a normal part of computerized test taking at the time of the invention].

**Claim 49:**

Doty teaches: *The method of claim 46, comprising the further step of using the processor to enable a proctor to add additional time for taking the test* [paragraphs 0034

and 0113, 0174] [control response time would require the test to be timed, and adding question times, input response times and time outs].

## **(10) Response to Argument**

### **Rejection of Claim 1:**

Appellant argues that Schwerdtfeger does not disclose "coordinating output devices such that their outputs are synchronized with each other" (Appeal Brief, pg. 11 third paragraph) as is recited in the Claim 1 element "*outputting the converted content into a plurality of output devices; and coordinating the plurality of output devices so that the plurality of the output devices delivers synchronized output*" and that "Claim 1 refers to output being synchronized between multiple output devices rather than within a single output device" [Appeal Brief, page 11].

The Examiner respectfully disagrees.

Appellant's specification page 10, line 30 – page 11, line 12; ¶ 0056 of the publication:

"Once content input 173 is processed by system 173, output 174 (as can be seen in Fig. 2A) can be produced in various formats. Such output 174 can be synchronized for multiple simultaneous outputs 174. System 101 contemplates that output 174 can be produced in any number or combination of ways, and delivered to any number or combination of devices. For example, digitized output **may be delivered to a monitor, a speaker (either internal or external to system 101)**, headphones, a Braille display device 183 (Fig. 5), a printer, a USB storage device 175 (Fig. 4), a web page, a database, and/or a variety of custom playback and viewing programs. It should be noted that almost any kind of electronic output format can be outputted or delivered. The output 174 may be in the form of Nemeth Braille Code, an image delivered in any number of formats, an audio stream delivered in any number of formats, or a text stream delivered in any number of formats. The output 174 can utilize sound effects, speech generation, animation, and/or a sign language avatar 184, visible in Fig. 10."

Schwerdtfeger does disclose the synchronization of output and recites the synchronization of more types of devices that is recited in the claim. The claim merely states that a plurality of devices are synchronized, but does not recite what type of devices are synchronized or how the devices are synchronized.

To begin with, it should be noted that the in the Appellant's argument, the Appellant did not describe how or why Schwerdtfeger does not disclose a synchronized output, the Appellant merely states that synchronization is not taught.

Most if not all computers, as well as many other devices including DVD players, synchronize output to multiple devices using multiple outputs at the same time. This is accomplished via the synchronization of audio/video output, typically by displaying video on the screen and playing audio on the speakers so that the audio is synchronized with the video. The screen and the speakers are "a plurality of coordinated output devices" that "deliver synchronized output."

Regarding Schwerdtfeger, it also teaches the ability to synchronize output to a plurality of output devices so that the output devices deliver synchronized output. For example, Schwerdtfeger teaches delivering synchronized output via a display screen (which visually displays the web page), speakers (which plays the audio after the text on the displayed web page is converted into speech) and a Braille display (which “displays” the text of the web page after it is converted to Braille) [see Col. 2, Lines 4-16; see Col. 3, Lines 10-20; see Col. 8, Line 43 through Col. 9, Line 10; see Col. 11, Lines 7-41].

Additionally, Schwerdtfeger discloses the ability to “issues new **output commands to assistive technology 74 and/or output device 24**” [col. 11, lines 15-20 and fig. 5]. This ability output commands to two output devices (74) and (24) is synchronized output even though the specific term “synchronized” is not used, when a command is sent to two devices they are synchronized.

Also, in the applicant's own specification describes the “synchronizing” of outputs as including a monitor and speakers either “internal or external to the system” [specification: page 11, line 4].

The rejection is proper because the Claim is so broad as to include any system that synchronizes output of two or more devices and because Schwerdtfeger does disclose synchronization in that output to two devices at the same time is described.

#### **Rejection of Claims 2-9, 43-45 and 51:**

Although some of these claims have been rejected with additional prior art the Appellant argues that these claims are allowable because they either, directly or

indirectly, depend from Claim 1 and that they are allowable because Claim 1 is allowable.

The Examiner respectfully disagrees for the reasons stated in response to the arguments for Claim 1.

**Rejection of Claim 27:**

Appellant argues that Holm does not disclose an "output configuration toolbar" where " the toolbar is configured to modify an existing third-party software application" [Appeal Brief, pages 12-13]. Appellant cites Exhibit A which is a definition of a toolbar and argues that the control panel in Holm is not a toolbar.

The Examiner respectfully disagrees.

Holm most definitely discloses a "toolbar". Holm discloses "[t]he preferred **transport bar** provides buttons resembling those found on a tape recorder, including Play, Stop, Fast-Forward, and Reverse" [col. 2, lines 11-25] This transport bar, is a toolbar and it has buttons for different functions. Also, the control panel of Holmes does have buttons and a row of icons and therefor may also be considered a toolbar under the Appellant's definition.

Because of the broadness of the claims Holm can read on the claims in multiple ways.

Appellant merely states that the buttons and controls of the transport bar and control panel are not a toolbar, but fails to argue how the how or why these buttons and controls do not qualify as a toolbar.

The appellant's specification does not contain the phrase "*the toolbar is configured to modify an existing third-party software*". Although the exact phrasing of claim need not be in the specification the terms should be described in the specification in a way that the claim language may be properly interpreted. The Appellant discloses modified or converted content being output to a device [publication: ¶ 0010-11], as well as describing toolbars in third-party software [¶ 0065-66] and the Appellant also discloses modification in "various other ways" [¶ 0061].

There is some ambiguity in Claim 27 because the appellant claims "modifying output to the special needs person" [line 6] and "modifying an existing third-party software application" [line 7]. It is unclear what type of modification that is meant for each element of the claim. It is also unclear if the same type of modification is being claimed in both lines or if the types of modifications different. Because the Appellant does not recite the type or kind of modification that is meant in the claims, the "modifying" can be interpreted this in two different ways.

First, the converting of the text into speech is the "modification" because the text of the third-party application is modified or converted into speech [Schwerdtfeger: col. 10 lines 1-68 and figs. 2, 10]. Second, the modification is the use of the computer to control the program to copy the text, this would be a modification of the program interface [Schwerdtfeger: col. 3, lines 35-68 and figs. 2, 10].

Both of these interpretations of the claim are disclosed in Schwerdtfeger. Therefor the rejection is proper.



**Rejection of Claims 30, 33-35 and 36-40:**

Although some of these claims have been rejected with additional prior art the Appellant argues that these claims are allowable because they either, directly or indirectly, depend from Claim 27 and that they are allowable because Claim 27 is allowable.

The Examiner respectfully disagrees for the reasons stated in response to the arguments for Claim 27.

**Rejection of Claims 41 and 42:**

Appellant argues that Schwerdtfeger does not disclose a "Braille keyboard" because Schwerdtfeger discloses a Braille display and a display is not a keyboard because "an individual can only receive information via a display" [Appeal Brief, page 14].

The Examiner respectfully disagrees.

The appellant's argument is that the Braille display does not contain input. However this argument is not valid because the Braille display disclosed in Schwerdtfeger has keys and buttons for input, "Braille displays also includes keys or buttons for user input" [col. 10 lines 30-35]. Even though the Braille display is used to translate the words that are displayed on a screen into Braille and output them in Braille on the device, the Braille display also includes keys for input that allow the user to provide responses.

Schwerdtfeger also discloses the use of multiple types of input devices, including "speech-to-text converter" and "other input devices not show" [col. 7, lines 17-40; col. 8, lines 5-18] which clearly anticipates the use of many types of input devices for disabled users.

Because Schwerdtfeger discloses a Braille display with input keys and because there is no definition or example of a "Braille keyboard" in the applicant's specification, the rejection is proper.

**Rejection of Claim 37:**

Appellant argues that Claim 37 recites the ability "to prevent the person from returning to a portion of the test" and "that the cited references are completely silent as to this subject matter.

The Examiner respectfully disagrees.

Doty is not silent on this matter. Doty discloses test question response time requirement set up by the administrator and if the student goes over the allotted time for the question, the question is forfeited, which means they can't return to the question [¶ 0174].

Also, the examiner stated in previous office actions that the ability to restrict a test takers ability to navigate a test was well known in the art at the time of the invention. In applicant's response dated 11/18/2009 the Applicant, now Appellant did not argue that the element was not well know in the art at the time of the invention, but simply argued that Doty was silent on this element.

Because Doty does disclose this element and it was well known at the time of the invention, the rejection is proper.

**Rejection of Claim 31:**

Appellant argues that Claim 31 is substantially similar to Claim 1 and is allowable for the reasons stated in Claim 1.

The Examiner respectfully disagrees.

The rejection of Claim 31 is proper for the same reasons given in response to argument for Claim 1. Please see the response to argument for Claim 1.

**Rejection of Claim 32:**

Appellant argues that Claim 32 recites a "Braille keyboard" and "recording responses" and is substantially similar to Claim 41 and is allowable for the reasons stated in Claim 41.

The Examiner respectfully disagrees.

The rejection of Claim 32 is proper for the same reasons given in response to argument for Claim 41. Please see the response to argument for Claim 41.

Note: It should be noted that the examiner used Holm to reject the elements of Claim 32 that involve a "toolbar". These elements are similar to the elements of Claim 27 that involve a "toolbar", but the Appellant did not argue or contest this rejection.

**Rejection of Claim 50:**

Appellant argues that Claim 50 allowable for reciting subject matter substantially similar to the subject matter of Claim 41 and permitting access to a sip-and-puff device.

The Examiner respectfully disagrees.

The rejection of Claim 32 is proper for the same reasons given in response to argument for Claim 41. Please see the response to argument for Claim 41.

Also, Schwerdtfeger also discloses the use of multiple types of input devices, including "speech-to-text converter" and "other input devices not show" for input by physically challenged persons [col. 7, lines 17-40; col. 8, lines 5-18] Schwerdtfeger clearly anticipates the use of many types of input devices for physically challenged users including a sip-and-puff device. The sip-and-puff device was invented in 1993 and was also well know at the time of the invention as an input device for physically challenged uses. The interchangeability of these input devices is described in Schwerdtfeger, and also show in Claim 17, as originally filed, and the Examiner's original rejection of Claim 17 mailed 1/29/2009 [page 20].

**Rejection of Claims 47-49:**

Although some of these claims have been rejected with additional prior art the Appellant argues that these claims are allowable because they either, directly or indirectly, depend from Claim 32 and that they are allowable because Claim 32 is allowable.

The Examiner respectfully disagrees for the reasons stated in response to the arguments for Claim 32.

**Objection to Claim 50:**

Objections to claims are not appealable. Only Rejections of claims are appealable, therefore the examiner has not included a response to this argument.

If Appellant would like the objection to Claim 50 reviewed Appellant must file a petition with the Director. See MPEP 706.06 and § 1.181.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 2176

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Benjamin J. Smith/

Examiner, Art Unit 2176

Conferees:

/DOUG HUTTON/

Supervisory Patent Examiner, Art Unit 2176

/Kieu Vu/

Supervisory Patent Examiner, Art Unit 2173